

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE CHEMON KEITH,

Defendant-Appellant.

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UNPUBLISHED

July 31, 2008

No. 278573

Wayne Circuit Court

LC No. 07-003986-01

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of assault with intent to commit murder, MCL 750.83, four counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of 16 to 25 years for the assault with intent to commit murder conviction, one to four years each for the felonious assault convictions, and a consecutive two-year term of imprisonment for the felony-firearm convictions. He appeals as of right. For the reasons set forth herein, we affirm.

In a brief submitted by defense counsel, defendant contends that the assault with intent to commit murder verdict is against the great weight of the evidence, but the substance of his argument relates to the sufficiency of the evidence. Defendant, proceeding in propria persona, also challenges the sufficiency of the evidence in a Standard 4 brief.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). An intent to kill may be proven by inference from any facts in evidence, including use of a lethal weapon, and minimal circumstantial evidence is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999); *People v Ray*, 56 Mich App 610, 615; 224 NW2d 735 (1974).

Viewed in a light most favorable to the prosecution, the evidence showed that defendant got into a fight with Tammy Robinson, following which, he specifically stated she was going to die and that he would come back and shoot her. Defendant left, returned with a gun, and started shooting. Tammy testified that defendant fired a shot at her while she was still on the porch. Her sister testified that defendant did not start shooting until she and Tammy had run inside, but also testified that defendant fired directly at them as they were running past the window. Tammy testified that she felt a bullet passing by her head. This evidence was clearly more than sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant assaulted Tammy Robinson by shooting at her, and specifically intended to kill her.

Defendant also argues that the trial court erred in scoring 50 points for offense variable (OV) 6 of the sentencing guidelines.

“A sentencing court has discretion in determining the number of points to be scored provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision “for which there is any evidence in support will be upheld.” *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

The trial court determined that a score of 50 points was appropriate for OV 6 because defendant acted with a premeditated intent to kill. MCL 777.36(1)(a). “To premeditate is to think about beforehand,” and “characterize[s] a thought process undisturbed by hot blood.” *People v Furman*, 158 Mich App 302, 308; 404 NW2d 246 (1987). “While the minimum length of time needed to exercise this process is incapable of exact determination, a sufficient interval between the initial thought and the ultimate action should be long enough to afford a reasonable man an opportunity to take a ‘second look’ at his contemplated actions.” *Id.* The evidence that defendant threatened to kill Tammy Robinson by coming back and shooting her, that he left the house, and that he returned with a gun and fired it at her, was sufficient to support a finding that defendant acted with a premeditated intent to kill. The trial court did not err in scoring 50 points for OV 6.

Affirmed.

/s/ Henry William Saad  
/s/ Karen M. Fort Hood  
/s/ Stephen L. Borrello